



Roll Call Number

16.099a

Agenda Item Number

57

Date June 13, 2016

**RESOLUTION APPROVING AMENDMENT AND AGREEMENT FOR  
TERMINATION OF 28E AGREEMENT WITH THE BOARD OF WATER  
WORKS TRUSTEES REGARDING THE SE AGRIBUSINESS PARK**

**WHEREAS**, on December 6, 1999, by Roll Call No. 99-3719, the City Council approved a 28E Agreement with the Board of Water Works Trustees of the City of Des Moines, Iowa (hereinafter referred to as "Water Works") whereby Water Works agreed to provide \$624,561.67, representing one-third of the purchase price of approximately \$1.8 million, for the City to purchase 166 acres of land from the Archer Daniels Midland Company at SE 43<sup>rd</sup> and Vandalia Road in the SE Agribusiness Urban Renewal Area; and

**WHEREAS**, on April 8, 2013, by Roll Call No. 13-0560, the City Council approved an Amended and Substituted 28E Agreement with the Board of Water Works Trustees regarding an ongoing cooperative undertaking to acquire, prepare and convey land for redevelopment in the City's SE Agrimergent Business Park (also known as the SE AgriBusiness Park Urban Renewal Area), which Amended 28E Agreement remains in effect until 2023 unless sooner terminated; and

**WHEREAS**, among other terms, the Amended 28E Agreement includes: (1) a grant from the City to the Des Moines Water Works ("Water Works") of a one-third property interest in a large portion of the real property located within the SE Agrimergent Business Park, (2) the requirement that the City reimburse Water Works for one-third of the sales proceeds of each parcel sold by the City for development, and (3) the condition that Water Works first approve any City improvement or sale in the SE Agrimergent Business Park, allowing Water Works to disapprove sales to developers that are supported by the City but are not high water consumers; and

**WHEREAS**, the City Manager and Water Works staff have concluded that the existing Amended 28E Agreement is no longer beneficial to either the City or Water Works, and that both parties would be better served by terminating the Amended 28E Agreement and returning Water Works' property interest to the City in exchange for payment by December 31, 2016, by the City to Water Works of \$655,789.75, which amount represents Water Works' initial payment for the SE Agrimergent Business Park and a five percent (5%) return on investment; and

**WHEREAS**, the City Manager has negotiated an Amendment and Agreement for Termination of 28E Agreement between the City and Water Works, as on file in the office of the City Clerk, in accordance with the terms set forth above; and

**WHEREAS**, on May 24, 2016, the Board of Water Works Trustees of the City of Des Moines approved the Amendment and Agreement for Termination of 28E Agreement.



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NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the proposed Amendment and Agreement for Termination of 28E Agreement is hereby approved.

BE IT FURTHER RESOLVED by the City Council of the City of Des Moines, Iowa, that the City Manager is directed to administer the terms of the Amendment and Agreement for Termination of 28E Agreement, and the Finance Department is authorized and directed to make payment in accordance with said Agreement upon direction from the City Manager.

(Council Communication No. 16-297 )

Moved by Gatto to adopt.

APPROVED AS TO FORM:

Glenna K. Frank

Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	7			

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

T. M. Franklin Council Mayor

Diane Rauh

City Clerk